



October 25, 2001

Ms. Mary E. Reveles  
Assistant County Attorney  
Fort Bend County  
301 Jackson, Suite 621  
Richmond, Texas 77469-3108

OR2001-4889

Dear Ms. Reveles:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 153896.

Fort Bend County (the "county") received three written requests for the personnel files of two deputy sheriffs and all "complaints and grievances" filed by one of those deputies against the county. You contend that portions of the personnel files you submitted as Exhibits D and E are excepted from public disclosure pursuant to sections 552.117(2) and 552.130 of the Government Code, and that the complaint information you submitted as Exhibit F may be withheld pursuant to section 552.103 of the Government Code.

Section 552.117(2) of the Government Code requires the county to withhold all information that relates to the home address, home telephone number, social security number, and family information of a peace officer as defined by article 2.12, Code of Criminal Procedure. Unlike other public employees, a peace officer need not affirmatively claim confidentiality for this information. Open Records Decision No. 488 (1988); *see also* Open Records Decision No. 506 (1988). Accordingly, we agree that the county must withhold all peace officers' section 552.117 information.<sup>1</sup>

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<sup>1</sup>We have marked certain information contained in the employee's complaints that must be withheld under section 552.117(2). The county must also withhold all section 552.117(2) information contained in the requested personnel files.

Section 552.130(a)(1) of the Government Code requires the county to withhold "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state." Accordingly, the county must withhold all driver's license information contained in the records at issue pursuant to section 552.130(a)(1) of the Government Code.

As noted above, you contend that the complaint information submitted as Exhibit F is excepted from required public disclosure pursuant to section 552.103 of the Government Code. Section 552.103 of the Government Code is commonly referred to as the "litigation exception." Under section 552.103(a) and (c), the governmental body raising this exception must demonstrate that (1) litigation involving the governmental body was pending or reasonably anticipated at the time of the records request, and (2) the information at issue is related to that litigation. *See also University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103.

In this instance, you contend that the county reasonably anticipates litigation because the deputy making the complaints has threatened to bring suit against the county in connection with his complaints. In this instance, however, we need not determine whether you have established that the complaint information "relates" to reasonably anticipated litigation against the county. Even assuming *arguendo* that such is the case, all parties to the prospective litigation have had access to the complaint information. Absent special circumstances, once information has been obtained by all parties to the litigation, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Consequently, the county may not withhold any of the complaint information pursuant to section 552.103.

Although the attorney general will not ordinarily raise an exception that might apply but that the governmental body has failed to claim, *see* Open Records Decision No. 325 at 1 (1982), we will raise section 552.101 of the Government Code, which protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," because the release of confidential information could impair the rights of third parties and because the improper release of confidential information constitutes a misdemeanor. *See* Government Code § 552.352. In this regard, we first note that among the records at issue are the employees' W-4 forms. These forms constitute confidential "tax return information" and as such must be withheld in their entirety pursuant to federal law. *See* 26 U.S.C. § 6103.

Section 552.101 of the Government Code also excepts from required public disclosure information coming with the common law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to

the public. *Id.* at 683-85. Some of the records at issue reveal the employees' designation of beneficiary, which reflects a personal financial decision that is protected by common law privacy, and thus must be withheld from the public. *See* Open Records Decision No. 600 at 11 (1992). Additionally, we have marked certain portions of the complaints that implicate a third party's privacy interests that must be withheld. *See Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied).

In summary, we have marked the information the county must withhold pursuant to section 552.101 of the Government Code. The county must also withhold all drivers' license numbers pursuant to section 552.130(a)(1) as well as all section 552.117(2) information contained in the personnel files and in Exhibit F. All of the remaining submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

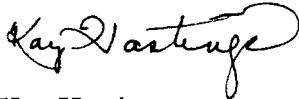
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kay Hastings".

Kay Hastings  
Assistant Attorney General  
Open Records Division

KH/RWP/seg

Ref: ID# 153896

Enc. Submitted documents

c: Mr. Don Maines  
The Herald Coaster  
P.O. Box 1088  
Rosenberg, Texas 77471  
(w/o enclosures)